

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

Case No.: 3:08-cv-143

PORTALES PLACE PROPERTY, LLC,

Plaintiff,

v.

MARIO GUESS a/k/a JERRY DEMARIO
GUESS a/k/a J.D. GUESS a/k/a JERRY D.
GUESS, LIGNA ACQUISITION GROUP, LLC,
and THP ESCROW SERVICES CORP.,

Defendants.

**ORDER GRANTING
PLAINTIFF'S MOTION TO STRIKE THE
ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIM AND FOR
DEFAULT JUDGMENT AGAINST
DEFENDANTS MARIO GUESS AND
LIGNA ACQUISITION GROUP, INC.**

This matter is before the Court on the Motion of Plaintiff Portales Place Property, LLC ("Plaintiff") for an order striking the Answer, Affirmative Defenses, and Counterclaim and rendering default judgment against Defendants Mario Guess a/k/a Jerry DeMario Guess a/k/a J.D. Guess a/k/a Jerry D. Guess ("Guess") and Ligna Acquisition Group, LLC ("Ligna"). Guess and Ligna have failed to file a response to the Motion.

This Court, having reviewed and considered all matters of record, finds and declares as follows:

1. On April 7, 2008, this Court issued an order directing, among other things, that Guess and Ligna serve document responses to a set of pre-approved document requests no later than April 25, 2008, and Guess appear for deposition no later than May 2, 2008. (Order Granting Expedited Discovery ¶¶ 1-4; Docket No. 9).

2. Guess and Ligna failed to produce any documents in response to the requests for production, and Guess failed to appear at the deposition.

3. This Court scheduled a hearing for April 30, 2008 to address various pending motions (Order of April 28, 2008; Docket No. 35) and issued an order directing Guess to appear at the hearing and show cause why he should not be arrested pursuant to N.C. Gen. Stat. § 1-409, et seq. (Order to Appear and Show Cause of April 28, 2008; Docket No. 34).

4. Guess failed to appear at the hearing on April 30, 2008 as ordered by this Court, and Guess and Ligna have not participated in any aspect of this litigation since that date.

5. This Court issued an order for Guess's arrest on May 2, 2008 for his willful failure comply with the show cause order. (Order of Arrest of May 2, 2008 ¶ 2; Docket No. 42).

6. Guess has made no attempt to contact the Court or bring himself into compliance with the show cause order, and the United States Marshal's Service has informed the Court that Guess has taken steps to evade its efforts to enforce the arrest order. (Order for Arrest for Criminal Contempt of May 9, 2008 ¶ 9; Docket No. 45).

7. On May 9, 2008 this Court found Guess in criminal contempt for failure to appear as ordered and issued a second order for his arrest. (Order for Arrest for Criminal Contempt of May 9, 2008 ¶ 9; Docket No. 45). Guess has continued to ignore the orders of this Court and evade arrest.

8. Guess and Ligna have completely failed to participate in discovery in this case as ordered by this Court, and it appears they have simply abandoned the case, including their Counterclaim.

9. Guess and Ligna have acted in bad faith with respect to the orders of this Court and engaged in a pattern of indifference and disrespect to the authority of the Court by: (i) disregarding discovery orders; (ii) refusing to obey show cause orders; and (iii) evading criminal contempt orders to frustrate the Court's ability to enforce its authority.

10. Plaintiff has been severely prejudiced by the failure of Guess and Ligna to participate in discovery or hearings or any other proceedings before the Court. The absolute refusal to produce any documents or appear for deposition has unfairly obstructed Plaintiff's ability to obtain information directly related to Plaintiff's claims.

11. The flagrant refusal of Guess and Ligna to comply with the orders of this Court represents callous disregard for the authority of this Court and the Rules, and deterrence of this type of conduct is vital for the efficient administration of justice.

12. Less severe sanctions will not be effective under these circumstances where Guess and Ligna have abandoned the case and are ignoring and evading orders of this Court, and where this Court has already imposed sanctions upon Guess that simply have not worked.

It is therefore ORDERED and DECREED that:

- i. Plaintiff's Motion is GRANTED.
- ii. The Answer, Affirmative Defenses and Counterclaim of Guess and Ligna are hereby stricken.
- iii. Judgment by default is hereby entered against Defendants Guess and Ligna in the amount of \$1,125,000, plus Plaintiff's costs and reasonable attorneys' fees.
- iv. Plaintiff shall submit its motion for attorneys' fees and costs in accordance with Rule 54 of the Federal Rules of Civil Procedure and Rule 54.1 of the Local Rules of Civil Procedure within twenty (20) days after entry of this Order and Judgment.

SO ORDERED.

Signed: January 8, 2009



Graham C. Mullen
United States District Judge

